

§ 385.401

(5) A statement why the complaint will have a *de minimis* impact on other entities;

(6) The facts and circumstances surrounding the complaint, including the legal or regulatory obligation breached by the respondent; and

(7) The requested relief.

(c) *Service*. The complainant is required to simultaneously serve the complaint on the respondent and any other entity referenced in the complaint.

(d) *Notice*. Public notice of the complaint will be issued by the Commission.

(e) *Answers, interventions and comments*. (1) An answer to a complaint is required to conform to the requirements of §385.213(c)(1), (2), and (3).

(2) Answers, interventions and comments must be filed within 10 days after the complaint is filed. In cases where the complainant requests privileged treatment for information in its complaint, answers, interventions, and comments must be filed within 20 days after the complaint is filed. In the event there is an objection to the protective agreement, the Commission will establish when answers, interventions, and comments are due.

(f) *Privileged treatment*. If a complainant seeks privileged treatment for any documents submitted with the complaint, a complainant must use the procedures described in section 385.206(e). If a respondent seeks privileged treatment for any documents submitted with the answer, a respondent must use the procedures described in section 385.213(c)(5).

[Order 602, 64 FR 17099, Apr. 8, 1999]

Subpart C [Reserved]

Subpart D—Discovery Procedures for Matters Set for Hearing Under Subpart E

SOURCE: Order 466, 52 FR 6966, Mar. 6, 1987, unless otherwise noted.

§ 385.401 Applicability (Rule 401).

(a) *General rule*. Except as provided in paragraph (b) of this section, this subpart applies to discovery in proceedings set for hearing under subpart E of this

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part, and to such other proceedings as the Commission may order.

(b) *Exceptions*. Unless otherwise ordered by the Commission, this subpart does not apply to:

(1) Requests for information under the Freedom of Information Act, 5 U.S.C. 552, governed by Part 388 of this chapter; or,

(2) Requests by the Commission or its staff who are not participants in a proceeding set for hearing under subpart E of this part to obtain information, reports, or data from persons subject to the Commission's regulatory jurisdiction; or

(3) Investigations conducted pursuant to Part 1b of this chapter.

§ 385.402 Scope of discovery (Rule 402).

(a) *General*. Unless otherwise provided under paragraphs (b) and (c) of this section or ordered by the presiding officer under Rule 410(c), participants may obtain discovery of any matter, not privileged, that is relevant to the subject matter of the pending proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having any knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible in the Commission proceeding if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) *Material prepared for litigation*. A participant may not obtain discovery of material prepared in anticipation of litigation by another participant, unless that participant demonstrates a substantial need for the material and that substantially equivalent material cannot be obtained by other means without undue hardship. In ordering any such discovery, the presiding officer will prevent disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(c) *Expert testimony*. Unless otherwise restricted by the presiding officer under Rule 410(c), a participant may discover any facts known or opinions